

WATER & SEWER RATE INCREASES

by Privately Owned Utilities

TYPICAL QUESTIONS...

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[What does it mean when I receive a notice that my rates are going up?](#)

When a privately owned utility wants to increase its retail water or sewer rates, it must send a notice to each of its customers and the Texas Natural Resource Conservation Commission (TNRCC) at least 30 days before the proposed rates can be effective.

[When will my bill increase and do I have to pay it?](#)

The proposed rates are effective on the date listed on the notice. The bill you receive approximately 30-45 days after the effective date will be based on the new rates. The utility is allowed to begin charging the proposed rates unless the TNRCC sets an *interim rate*. You must pay the bill you receive.

[What are interim rates?](#)

A utility's proposed rates are effective at least 30 days after sending its customers a notice. Under certain circumstances, however, the TNRCC may set an interim rate, which is a temporary rate charged until a final rate is approved. The staff may recommend interim rates if the proposed rates cannot be supported by the financial information provided by the utility in its initial application, or the increase results in a significant change in an average customer's bill. If interim rates are set, the utility is required to notify its customers.

[How often can the utility increase rates?](#)

The utility normally may apply for a rate increase once every 12 months. To do so the utility must file a rate change application with the TNRCC. The utility may propose an increase more often if it can show an extreme financial hardship. The determination of whether or not a hardship exists is made by the TNRCC.

THE PROTEST PROCESS...

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[How do I, a utility customer, challenge a rate increase?](#)

When a privately owned utility wants to increase its retail water or sewer rates, it must send a *Notice of Proposed Rate Change* in a format approved by the TNRCC. The notice must state that the customers have a right to protest the rate change to the TNRCC.

Protests can be submitted to the TNRCC in individual letters or on a petition signed by customers of the utility. The protests should specify the name of the utility, mention the proposed rate change in general, and include the writer's name, address and telephone number.

Mail protests to:

TNRCC

Water Utilities Division/Rates Section

P. O. Box 13087

Austin, Texas 78711-3087

Protests must be received by the TNRCC within 60 days of the *effective date* of the rate change.

If protests are received from 10 percent or more of the utility's customers, the TNRCC must hold a public hearing. The TNRCC determines whether 10 percent of the customers have filed a protest. (Each meter, or household, is counted as one utility customer, not each person using the utility services in a home.)

[Is the utility required to give me the names of all of its customers?](#)

No. The utility is not required to give you a list of customers.

[How are the customers notified about a public hearing?](#)

Once TNRCC schedules a public hearing due to customer protests on the utility's proposed rate increase, the utility is required to send notice of the time and place of the hearing to all of its customers at least ten days before the hearing date.

[Does TNRCC staff review the proposed rates even if the customers do not request a hearing or do not attend a hearing once one is scheduled?](#)

Regardless of whether the customers protest a rate increase, the TNRCC staff reviews the proposed rates. This review includes consideration of previous rate cases and information received from the utility to determine if a rate increase is justified. In some instances the TNRCC staff may request a public hearing because of a question or concern raised by the review process.

WHAT UTILITY RATES COVER...

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[How does the Commission set rates? What does it consider?](#)

Every privately owned utility that proposes an increase must supply financial and

operational information concerning its *cost of service*. The cost of service is the amount of money it takes to operate the utility. It includes all reasonable and necessary expenses properly incurred by the utility in serving its customers. The utility's application for approval includes operational expenses, loans and loan payments, equipment, quality of service reports, and information on water usage and customers. A copy of your utility's application, which includes this information, is available from the TNRCC for the cost of making copies. It is also available for review in the utility's office.

"The utility owner has his relatives on the payroll." Is it fair to charge the customers for this?

TNRCC staff reviews transactions where relatives are involved much more closely than it reviews transactions among parties that are not related. Comparisons are made to similar jobs where the employee is not related to the employer. The TNRCC staff also reviews the overall salary expenditures of the utility to assure that they are just and reasonable. All rate recommendations made by the TNRCC staff are based upon expenses found to be just, reasonable and necessary in the providing of service.

How do I know the utility will invest the increase back into the utility?

First, the customers must be aware that the utility is a business, and like any other business operates in anticipation of making a profit. In fact, TNRCC rules specifically provide that the utility is allowed a reasonable return on its investment. There is no requirement that a utility invest its profits back into the company. However, TNRCC rules do require that the utility make any improvements needed to assure adequate and necessary service. This may require that the utility reinvest its profits or, in the event no such money is available, the utility may have to obtain a loan or some other type of financing. In rare situations the TNRCC may approve a customer surcharge to finance badly needed improvements.

Are management practices relevant to setting rates?

Yes. Some decisions made by utility management can increase costs unreasonably or unnecessarily. TNRCC staff recommends downward adjustments on rates for expenses that are unreasonable or unnecessary to provide water service. Also, management practices are considered when the utility's profit is reviewed for reasonableness.

Is quality of service an issue? How can I be assured that the service will improve as a result of the increase?

Quality of service is always reviewed during a rate case. The TNRCC requires a utility to provide *continuous and adequate service* to its customers. *Continuous and adequate service* usually is measured by looking at the company's compliance with TNRCC rules and regulations for public water and sewer systems and by reviewing customer complaints. If a utility is not in compliance when it applies for a rate increase, TNRCC usually will request a hearing and order a schedule for repairs or improvements to be completed.

Participants in the hearing process, including customers, may agree on certain repairs to be included in a negotiated settlement order. If the agreed improvements are included in the actual order, the TNRCC has the power to enforce these orders and will follow up on them. The utility and customers also may agree on side issues not enforceable by the TNRCC, which may be attached to the order as an exhibit.

YOUR OPTIONS...

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How do I participate in a public hearing regarding a proposed rate increase?

A customer can attend a hearing simply as an observer, can give a brief *public comment* (statement of belief, opinion or concern to the examiner), can serve as a *witness* providing testimony under oath, or can attend to ask to participate actively as a *party*.

Although public comment is not considered evidence and cannot be the basis of the

TNRCC's decision, it is valuable to identify important issues and concerns that need to be considered.

Testifying as a *witness* may require writing out the proposed testimony in advance, presenting it on the witness stand under oath and being cross-examined (questioned) by the TNRCC staff attorney, utility representative and other parties. Only facts that are within the witness' personal experience and knowledge may be presented.

To become a *party*, a customer must attend the hearing and specifically ask to be named as a party. A party, or his/her representative, must attend all hearings and participate in each phase of the process. This may include the preliminary discovery phase where specific written questions may be asked of other parties. As a party, you also may be asked questions and must respond. At the hearing you may ask questions, or cross-examine all witnesses.

Must all customers attend the hearing?

Not necessarily. The customers who do attend the hearing, however, will have a better chance to make sure their concerns are addressed and to influence the outcome of the proceeding, particularly in the case of a settlement. If customers plan to attend and represent other customers, they should have written authorization from those customers to do so.

Will the TNRCC's Office of Public Interest Counsel represent me?

No, the Office of the Public Interest Counsel (OPIC) represents the public interest in general, not particular parties in specific cases. The OPIC participates in as many TNRCC proceedings as time permits. This participation is in the interest of helping to fully develop all available information, thus assuring that any decision proposed by the examiner is a well-informed decision. Although the OPIC does not specifically represent any citizen or group, it does provide information (copies of rules, etc.) and explanations to unrepresented citizens as to how to participate in the hearing process.

Can customers request the public hearing be held in their community?

Yes, but to save tax dollars, most public hearings regarding utility rate increases are held at the TNRCC's offices in Austin, Texas. However, when the TNRCC receives numerous requests for the hearing to be held in the community, a local hearing may be held, budget permitting. If you wish the public hearing to be held in your community, you should include that request in the protest that you send to the TNRCC Water Utilities Division, and it will be given serious consideration.

Who pays for expenses incurred during a rate case hearing?

By law the utility is allowed to recover its reasonably incurred expenses in defending a rate increase (rate case expenses). These may include attorney's fees and fees for expert witnesses. The TNRCC staff reviews the utility's request to recover rate case expenses for reasonableness and necessity. Considered are such factors as the financial impact on customers, the necessity of obtaining an increase, whether the charges exceed usual and customary charges for similar services and the reasonableness of related travel expenses.

There is no provision in the law for the customers to recover similar expenses through the rate structure or from the utility.

THE PUBLIC HEARING...

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How should I prepare for a public hearing?

The initial hearing on a rate application is typically conducted on an informal basis, but you do need to be prepared if you wish to participate effectively. If you plan to appear at the public hearing on behalf of other customers, you should get a letter from these customers stating that you have authority to represent them as well as yourself at the hearing. Bring the letter(s) with you to the public hearing.

If you want to review the utility's expenses on which its proposed rate is based, look at the rate change application prior to the hearing. The application can be reviewed at the utility's office located in your community or you can obtain a copy from the TNRCC for the cost of making copies.

You are not required to be represented by an attorney or rate consultant at the public hearing. The initial hearing is typically a negotiation session to try to arrive at a rate acceptable to everyone. TNRCC staff makes every effort to simplify the hearing process and explain the procedures so that every customer can effectively participate. However, if no agreed settlement can be reached at the initial hearing and an evidentiary hearing is required, you may wish to hire professional counsel.

What issues are addressed at a typical rate increase public hearing?

The following issues are addressed at a public hearing:

- ◆ Based on the utility's reasonable cost of providing service, should the utility be granted a rate increase?
- ◆ If so, how much should the annual increase be, and what should the rates be?
- ◆ Is the utility providing continuous and adequate service?
- ◆ Is the utility in compliance with TNRCC rules and regulations for public water and sewer systems?

What happens at a typical rate increase public hearing?

An attorney and experts from the TNRCC, a representative of the utility, the TNRCC's Public Interest Counsel and interested customers of the utility appear before a TNRCC hearings examiner at the place and time shown in the notice of hearing. The hearings examiner acts as judge. The examiner makes sure that the utility has provided the required notices of the proposed rate increase and of the hearing. The examiner allows customers to provide public comment, then recesses the hearing to allow some time for those present to discuss the proposed rate increase and try to reach an acceptable settlement. If no settlement is

reached, an *evidentiary hearing* can be held immediately if agreed to by the parties, or a date for a future hearing is set.

An evidentiary hearing resembles a court trial. Again, the hearings examiner presides over the hearing. The utility presents evidence to support the rate increase. TNRCC staff members present evidence to support the rates they believe are reasonable. The Public Interest Counsel participates by cross-examining witnesses to support the course of action believed to be in the public's best interest, and may present other evidence. Customers may present evidence themselves or hire expert witnesses to present evidence to challenge the proposed rate increase.

What are the advantages of a negotiated settlement?

Reaching an agreement regarding water or sewer rates is generally the preferred method of dealing with the utility's proposed rate increase. It is the quickest and least expensive method of addressing the utility's rate increase as well as quality of service issues of particular interest to the customers.

However, no party is required to settle, and each party retains the right to an evidentiary hearing until a settlement is reached. If a settlement agreement is to be binding, all parties to the public hearing must agree to the terms of the settlement.

COMPLETING THE PROCESS...

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What happens after the hearing?

Once all evidence is presented, the hearings examiner considers the evidence and writes a *Proposal for Decision*, which recommends a rate. Everyone who participated in the hearing as a *party* will receive a copy of the proposal. Each party has an opportunity to write comments on the examiner's proposal.

All parties and other interested persons may appear at the public meeting of the TNRCC, known as a Commission *agenda*. Some will make brief comments in support of their position to the Commissioners. The Commissioners make the final decision, usually at that meeting. The entire process, from

the date of the initial hearing to the date of the Commission's decision, could take from 2-8 months, depending upon the complexity of the case.

Do I need to attend the agenda meeting?

If you have negotiated a settlement and you agree with the settlement, you do not need to attend. If the proposed rate increase went through the evidentiary hearing process, you may want to appear to argue your position before the Commission.

Will the utility be required to make refunds if the Commission determines that the proposed rates are too high?

Unless otherwise agreed by the parties, the utility is required to issue refunds if the final approved rates are lower than the proposed or interim rates collected. Since refunds are tedious and expensive to calculate, the customers and utility sometimes agree, as part of the negotiations, to waive the refunding requirement.

For answers to questions not covered in this brochure, call any of the following TNRCC offices:

- ◆ Public Interest Counsel
512/239-6363
- ◆ Utility Certification and Rate Design Section
Water Utilities Division
512/239-6960
- ◆ Consumer and Utility Assistance Section
Water Utilities Division
512/239-6105

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TNRCC

WATER UTILITIES DIVISION

P.O. Box 13087

AUSTIN, TEXAS 78711-3087

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